IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

RCRev..No. 198 of 2007()

RCA.48/2006 OF DISTRICT COURT/RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE.
RCP.68/2005 OF RENT CONTROL/ ADDL.M.C.I, KOZHIKODE DATED 20/12/05.
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REVISION PETITIONER/APPELLANT IN R.C.A./1ST RESPONDENT IN R.C.P:

A.K.NAJEEB, AGED 42 YEARS,
S/O.LATE POKKU HAJI, HILL TOP, PARAL P.O.,
THALASSERY, KANUR.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENTS:RESPONDENTS IN R.C.A./PETITIONERS & 2ND RESPONDENT IN R.C.P.
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1. M/S.CRYSTAL HOUSE, MAVOOR ROAD, CALICUT, KALATHINKUNNU AMSOM & DESOM,KOZHIKODE TALUK A FIRM REGD. UNDER INDIA PARTNERSHIP ACT AND REP.BY ITS MANAGING PARTNER SUHARA HARIS, AGED 51 YRS, W/O.LATE V.HARIS, SAJU COTTAGE,V.O.ROAD, VADAKARA,KOZHIKODE.

2. I.P.VIJAYAN, AGED 66 YEARS, S/O.IMBICHIKUTTAN,SANGEETH,ASOKAPURAM, CALICUT.

3. SAJAD HARIS, S/O.LATE V.HARIS, AGED 29 YEARS,SAJU COTTAGE, V.O.ROAD, VADAKARA,KOZHIKODE.

4. SALEEL HARIS, AGED 27 YRS,
S/O.LATE V.HARIS,SAJU COTTAGE,
V.O.ROAD, VADAKARA,KOZHIKODE.

5. SAMEER HARIS, AGED 24 YEARS,
S/O.LATE V.HARIS,SAJU COTTAGE,
V.O.ROAD, VADAKARA,KOZHIKODE.

6. HEENA HARIS, AGED 23 YEARS,
D/O.LATE V.HARIS,SAJU COTTAGE,
V.O.ROAD, VADAKARA,KOZHIKODE.

7. JASMINE HARIS, AGED 18 YEARS,
D/O.LATE V.HARIS,SAJU COTTAGE,
V.O.ROAD, VADAKARA,KOZHIKODE.

8. A.K.HASHIM, AGED 39 YEARS,
D/O.LATE POKKU HAJI,
HILL TOP, PARAL P.O.,
THALASSERY,KANNUR.

BY ADV. SRI.C.P.MOHAMMED NIAS
SRI.B.PRABHANANDAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO. 198 OF 2007-C

Dated 12th September, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the 1st respondent in the R.C.P., who is one of the tenants of the petition schedule building. The R.C.P was filed under Sections 11(2)(b), 11(8) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act. The tenants filed counter statement, resisting the prayers in the R.C.P. On 8.12.2005, when the case was posted for evidence, all the tenants remained absent. The case was posted for orders on 20.12.2005 and on the said date, the R.C.P was allowed. The petitioner herein filed R.C.A. No.48/2006. In the said appeal filed before the Rent Control Appellate Authority, a specific ground was taken to the effect that the tenants did not get a fair opportunity to tender evidence from their side. Their absence was based on valid grounds. But, the appellate authority did not consider that aspect. It felt that it can consider the decision only on merits, based on the materials before the court below. Therefore, the appeal

was dismissed. Hence this revision. The main ground urged in this revision is that the appellate authority mis-directed itself in law by refusing to consider the claim of the tenants that they did not get a fair opportunity to present their case.

2. We heard the learned counsel appearing for the respondents herein. The Rent Control Appellate Authority declined to consider the ground raised by the petitioner herein that he did not get an opportunity to adduce evidence, relying on the decisions of this Court in **Bava alias Asees v. Madhavan and Ors.** [1995(2) KLJ 706] and **Abdul Azeez v. Shareefa Beevi** [1997(1) KLT 8]. We notice that those decisions are not applicable to the facts of the case, as the parties concerned therein did not contend that they did not get a fair chance to present their case. In this case such a ground was taken and therefore, the appellate authority was bound to consider the same. So, normally, the matter should be remitted to the Rent Control Appellate Authority. We went through the copy of the appeal memorandum handed over to us. We notice that the ground taken by the petitioner herein before the appellate authority on the above point is a valid ground. So, the appeal was liable to be allowed. Therefore, in order to avoid unnecessary delay, we are of the view that the matter requires

remission to the Rent Controller. Accordingly, the orders of the Rent Controller and the appellate authority are set aside. R.C.P. No.68/2005 is restored to file. The parties shall appear before the Rent Control Court on 16.10.2007. The Rent Controller shall endeavour to dispose of the petition expeditiously.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/